

SUBCHAPTER F—TRIBAL GOVERNMENT

PART 61—PREPARATION OF ROLLS OF INDIANS

Sec.

- 61.1 Definitions.
- 61.2 Purpose.
- 61.3 Information collection.
- 61.4 Qualifications for enrollment and the deadline for filing application forms.
- 61.5 Notices.
- 61.6 Application forms.
- 61.7 Filing of application forms.
- 61.8 Verification forms.
- 61.9 Burden of proof.
- 61.10 Review of applications by tribal authorities.
- 61.11 Action by the Director or Superintendent.
- 61.12 Appeals.
- 61.13 Decision of the Assistant Secretary on appeals.
- 61.14 Preparation, certification and approval of the roll.
- 61.15 Special instructions.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 25 U.S.C. 1401 *et seq.*, as amended; Pub. L. 100-139; Pub. L. 100-580; Pub. L. 101-42.

SOURCE: 50 FR 46430, Nov. 8, 1985, unless otherwise noted.

§ 61.1 Definitions.

As used in these regulations:

Act means any act of Congress authorizing or directing the Secretary to prepare a roll of a specific tribe, band, or group of Indians.

Adopted person means a person whose natural parents' parental rights have been given to others to exercise by court order.

Approved roll means a roll of Indians approved by the Secretary.

Assistant Secretary means the Assistant Secretary of the Interior for Indian Affairs or an authorized representative acting under delegated authority.

Basic roll means the specified allotment, annuity, census or other roll designated in the Act or Plan as the basis upon which a new roll is to be compiled.

Commissioner means the Commissioner of Indian Affairs or an authorized representative acting under delegated authority.

Descendant(s) means those persons who are the issue of the ancestor through whom enrollment rights are

claimed; namely, the children, grandchildren, etc. It does not include collateral relatives such as brothers, sisters, nieces, nephews, cousins, etc. or adopted children, grandchildren, etc.

Director means the Area Director of the Bureau of Indian Affairs area office which has administrative jurisdiction over the local field office responsible for administering the affairs of the tribe, band, or group for which a roll is being prepared or an authorized representative acting under delegated authority.

Enrollee(s) means persons who have met specific requirements for enrollment and whose names appear on a particular roll of Indians.

Lineal ancestor means an ancestor, living or deceased, who is related to a person by direct ascent; namely, the parent, grandparent, etc. It does not include collateral relatives such as brothers, sisters, aunts, uncles, etc., or adopted parents, grandparents, etc.

Living means born on or before and alive on the date specified.

Plan means any effective plan prepared under the provisions of the Act of October 19, 1973, Pub. L. 93-134, 87 Stat. 466, as amended, which authorizes and directs the Secretary to prepare a roll of a specific tribe, band, or group of Indians.

Secretary means the Secretary of Interior or an authorized representative acting under delegated authority.

Sponsor means any person who files an application for enrollment or appeal on behalf of another person.

Staff Officer means the Enrollment Officer or other person authorized to prepare the roll.

Superintendent means the official or other designated representative of the Bureau of Indian Affairs in charge of the field office which has immediate administrative responsibility for the affairs of the tribe, band, or group for which a roll is being prepared.

Tribal Committee means the body of a federally recognized tribal entity vested with final authority to act on enrollment matters.

Tribal Governing Document means the written organizational statement governing the tribe, band, or group of Indians and/or any valid document, enrollment ordinance, or resolution enacted thereunder.

§ 61.2 Purpose.

The regulations in this part 61 are to govern the compilation of rolls of Indians by the Secretary of the Interior pursuant to statutory authority. The regulations are not to apply in the compilation of tribal membership rolls where the responsibility for the preparation and maintenance of such rolls rests with the tribes.

§ 61.3 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the information collection requirements contained in § 61.4 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

§ 61.4 Qualifications for enrollment and the deadline for filing application forms.

(a) The qualifications which must be met to establish eligibility for enrollment and the deadline for filing application forms will be included in this part 61 by appropriate amendments to this section; *except that*, when an Act or Plan states the qualifications for enrollment and the deadline for filing application forms and specifies that the regulations contained in this part 61 will apply, amendment to this section will not be required for the procedures contained in this part 61 to govern the preparation of the roll; *provided further*, the provisions contained in this part 61 that were in effect when the regulations were amended to include paragraphs (r), (s), (w), (x), (y), and (z) shall control the preparation of the rolls under paragraphs (r), (s), (w), (x), (y), and (z) of this section.

(b) *Pembina Band of Chippewa Indians.* (1) Pursuant to section 7(a) of the Act of December 31, 1982, Pub. L. 97-403, 96 Stat. 2022, a roll is to be prepared and used as the basis for the distribution of an apportioned share of judgment funds awarded the Pembina Chippewa Indians in dockets numbered 113, 191, 221 and

246 of the Court of Claims of all persons who:

- (i) Are of at least $\frac{1}{4}$ degree Pembina Chippewa blood;
- (ii) Are citizens of the United States;
- (iii) Were living on December 31, 1982;
- (iv) Are not members of the Red Lake Band of Chippewa Indians, the Turtle Mountain Band of Chippewa Indians, the Chippewa Cree Tribe of the Rocky Boy's Reservation, or Minnesota Chippewa Tribe, or the Little Shell Band of Chippewa Indians of Montana; *and*
- (v) Are enrolled or are lineal descendants of persons enrolled:

(A) As Pembina descendants under the provisions of the Act of July 29, 1971 (85 Stat. 158), for the disposition of the 1863 Pembina Award, or

(B) On the McCumber roll of the Turtle Mountain Indians of 1892, or

(C) On the Davis roll of the Turtle Mountain Indians of 1904; or

(D) As Chippewa on the tentative roll of the Rocky Boy Indians of May 30, 1917, or the McLaughlin census report of the Rocky Boy Indians of July 7, 1917, or the Roe Cloud Roll of Landless Indians of Montana; *or*

(vi) Are able to establish Pembina ancestry on the basis of any other rolls or records acceptable to the Secretary.

(2) Application forms for eligibility must be filed with the Superintendent, Turtle Mountain Agency, Bureau of Indian Affairs, Belcourt, North Dakota 58316, by March 10, 1986. Application forms filed after that date will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for eligibility.

(3) Each application for enrollment as a member of any of the tribes specified in paragraph (b)(1)(iv) of this section, except the Red Lake Band of Chippewa Indians, which may be rejected by the tribes shall be reviewed by the Superintendent to determine whether the applicant meets the qualifications for eligibility as a descendant of the Pembina Band of Chippewas under paragraph (b)(1) of this section. Each rejection notice shall contain a statement to the effect that the application is being given such review.

(c) *Cherokee Band of Shawnee Indians.* (1) Pursuant to section 5 of the Act of December 20, 1982, Pub. L. 97-372, 96 Stat. 1815, a roll is to be prepared and

used as the basis for the distribution of an apportioned share of judgment funds awarded the Shawnee Tribe in dockets 64, 335, and 338 by the Indian Claims Commission and in docket 64-A by the U.S. Court of Claims of all persons of Cherokee Shawnee ancestry:

(i) Who were living on December 20, 1982;

(ii) Who are lineal descendants of the Shawnee Nation as it existed in 1854, based on the roll of the Cherokee Shawnee compiled pursuant to the Act of March 2, 1889 (25 Stat. 994), or any other records acceptable to the Secretary including eligibility to share in the distribution of judgment funds awarded the Absentee Shawnee Tribe of Oklahoma on behalf of the Shawnee Nation in Indian Claims Commission docket 334-B as a Cherokee Shawnee descendant; *and*

(iii) Who are not members of the Absentee Shawnee Tribe of Oklahoma or the Eastern Shawnee Tribe of Oklahoma.

(2) Application forms for enrollment must be filed with the Director, Muskogee Area Office, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401, by May 9, 1986. Application forms filed after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(d) *Miami Indians of Indiana*. (1) Pursuant to section 3 of the Act of December 21, 1982, Pub. L. 97-376, 96 Stat. 1828, a roll is to be prepared and used as the basis for the distribution of an apportioned share of judgment funds awarded the Miami Tribe of Oklahoma and the Miami Indians of Indiana in dockets 124-B and 254 by the U.S. Court of Claims of all persons of Miami Indian ancestry:

(i) Who were living on December 21, 1982;

(ii) Whose name or the name of a lineal ancestor appears on:

(A) The roll of Miami Indians of Oklahoma and Indiana prepared pursuant to the Act of June 2, 1972 (86 Stat. 199), or

(B) The roll of Miami Indians of Indiana of June 12, 1895, or

(C) The roll of “Miami Indians of Indiana, now living in Kansas, Quapaw Agency, I.T., and Oklahoma Territory,” prepared and completed pursuant to the Act of March 2, 1895 (28 Stat. 903), or

(D) The roll of the Eel River Miami Tribe of Indians of May 27, 1889, prepared and completed pursuant to the Act of June 29, 1888 (25 Stat. 223), or

(E) The roll of the Western Miami Tribe of Indians of June 12, 1891 (26 Stat. 1001); *and*

(iii) Who are not members of the Miami Tribe of Oklahoma.

(2) Application forms for enrollment must be filed with the Director, Muskogee Area Office, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401, by May 9, 1986. Application forms filed after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(e) *Cow Creek Band of Umpqua Tribe of Indians*. (1) Pursuant to section 5 of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987, Pub. L. 100-139, a tribal membership roll is to be prepared comprised of all persons who are able to establish that they are of Cow Creek or other Indian ancestry indigenous to the United States based on any rolls or records acceptable to the Secretary and were not members of any other Federally recognized Indian tribe on July 30, 1987; and:

(i) Who are named on the tribal roll dated September 13, 1980, the so-called Interrogatory No. 14 roll;

(ii) Who are descendants of individuals named on the tribal roll dated September 13, 1980, the so-called Interrogatory No. 14 roll, and were born on or prior to October 26, 1987; or

(iii) Who are descendants of individuals who were considered to be members of the Cow Creek Band of Umpqua Tribe of Indians for the purposes of the treaty entered between such Band and the United States on September 19, 1853.

(2) Application forms for enrollment must be filed with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 539, Siletz, Oregon 97380

by June 1, 1990. Application forms filed after that date will be rejected for inclusion on the tribal membership roll for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(f) *Cow Creek Band of Umpqua Tribe of Indians descendants.* (1) Pursuant to section 6(a)(1) of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987, Pub. L. 100-139, a roll of nontribal members eligible to participate in the Higher Education and Vocational Training Program and the Housing Assistance Program of the Cow Creek Band of Umpqua Tribe of Indians is to be prepared of individuals:

(i) Who are descended from persons considered members of the Cow Creek Band of Umpqua Tribe of Indians for purposes of the treaty entered into between such band and the United States on September 19, 1853 (10 Stat. 1027), as ratified by the Senate on April 12, 1854; and

(ii) Who did not share or are not descendants of persons who shared in the distribution of funds under the Act entitled "An Act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members thereof, and for other purposes," approved August 13, 1954 (25 U.S.C. 564 *et seq.*), or under the Act entitled "An Act to provide for the termination of Federal supervision over the property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, and for other purposes," approved August 13, 1954 (25 U.S.C. 691 *et seq.*).

(2) Application forms for enrollment must be filed with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P. O. Box 539, Siletz, Oregon 97380. Upon receipt of an application form, the Superintendent shall furnish a copy to the Cow Creek Band of Umpqua Tribe of Indians.

(g) *Cow Creek Band of Umpqua Tribe of Indians descendants.* (1) Pursuant to section 6(a)(2) of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987, Pub. L. 100-139, a roll of nontribal members eligible to participate in the

Elderly Assistance Program of the Cow Creek Band of Umpqua Tribe of Indians is to be prepared of individuals:

(i) Who are descended from persons considered members of the Cow Creek Band of Umpqua Tribe of Indians for purposes of the treaty entered into between such Band and the United States on September 19, 1853 (10 Stat. 1027), as ratified by the Senate on April 12, 1854;

(ii) Who did not share or are not descendants of persons who shared in the distribution of funds under the Act entitled "An act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members thereof, and for other purposes," approved August 13, 1954 (25 U.S.C. 564 *et seq.*), or under the Act entitled "An Act to provide for the termination of Federal supervision over the property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, and for other purposes," approved August 13, 1954 (25 U.S.C. 691 *et seq.*); and

(iii) Who were 50 years or older as of December 31, 1985.

(2) Application forms for enrollment must be filed with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P. O. Box 539, Siletz, Oregon 97380 by April 25, 1988, and with the Cow Creek Band of Umpqua Tribe of Indians. Application forms filed after that date will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for eligibility for inclusion on the roll of persons eligible to participate in the Elderly Assistance Program, but will be considered for inclusion on the roll of persons eligible to participate in the Higher Education and Vocation Training Program and the Housing Assistance Program. Upon receipt of an application form, the Superintendent shall furnish a copy to the Cow Creek Band of Umpqua Tribe of Indians.

(h) *Indians of the Hoopa Valley Indian Reservation.* Pursuant to section 5 of the Hoopa-Yurok Settlement Act of October 31, 1988, Pub. L. 100-580, a roll of Indians of the Reservation eligible to participate in certain settlement provisions is to be prepared of all persons:

(1) Who were born on or prior to and living on October 31, 1988; and

(2) Who are citizens of the United States; and

(3) Who were not, on August 8, 1988, enrolled members of the Hoopa Valley Tribe; and

(4) Who meet the criteria to qualify as an “Indian of the Reservation” under one of the following standards established by the U.S. Court of Claims in its March 31, 1982, decision, and the United States Claims Court in its May 14, 1987, and March 1, 1988, decisions in the cases of *Short v. United States*, (Cl. Ct. No. 102-63):

(i) Standards A–E which are:

(A) Allottees of land on any part of the Reservation, living on October 1, 1949, and lineal descendants of allottees living on October 1, 1949;

(B) Persons living on October 1, 1949, and resident on the reservation at that time, who have received Reservation benefits or services, and hold an assignment, or can make other proof that though eligible to receive an allotment, they have not been allotted, and the lineal descendants of such persons, living on October 1, 1949;

(C) Persons living on June 2, 1953, who have at least ¼ degree Reservation blood, as defined in paragraph (h)(4)(i) of this section, have forebears born on the Reservation and were resident on the Reservation for 15 years prior to June 2, 1953;

(D) Persons of at least ¼ degree Indian blood, born after October 1, 1949, and before August 9, 1963, to a parent who is or would have been, when alive a qualified Indian of the Reservation under the standards in paragraphs (h)(4)(i) (A), (B) and (C) of this section, or has previously been held entitled to recover in the *Short* cases;

(E) Persons born on or after August 9, 1963, who are of at least ¼ degree Indian blood, derived exclusively from the qualified parent or parents who is or would have been, when alive, a qualified Indian of the Reservation under the standards in paragraphs (h)(4)(i) (A), (B) and (C) of this section, or has previously been held entitled to recover in the *Short* cases; or

(ii) Manifest Injustice Standard which is: Persons who do not qualify under the standards in paragraph

(h)(4)(i) of this section, but who it would be manifestly unjust to exclude from enrollment. To qualify under the manifest injustice standard, persons must adequately demonstrate all of the following:

(A) A significant degree of Indian blood (at least ¼ degree Indian blood, and

(B) Personal connections to the Reservation shown through a substantial period of residence on the Reservation (nearly ten years of residence), and

(C) Personal ties to the land of the Reservation and/or ties to the land through a lineal ancestor; and

(5) Who file or have filed on their behalf application forms for enrollment with the Superintendent, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049, by April 10, 1989. Applications filed after that date will not be considered for inclusion on the roll regardless of whether the applicant otherwise meets the qualifications for enrollment, except for plaintiffs determined to be an “Indian of the Reservation” in the *Short* cases, who will, if they otherwise meet the requirements of the Act, be included on the roll.

(6) As used in paragraph (h) of this section:

(i) *Reservation blood* means the blood of the following tribes or bands: Yurok; Hoopa/Hupa; Grouse Creek; Hunstand/Hoonsotton/Hoonsolton; Miskut/Miscotts/Miscolts; Redwood/Chilula; Saiaz/Nongatl/Siahs; Sermaltion; South Fork; Tish-tang-atan; Karok; Tolowa; Sinkyone/Sinkiene; Wailake/Wylacki; Wiyot/Humboldt; and Wintun.

(ii) *Short* cases means the cases entitled *Jessie Short et al. v. United States*, (Cl. Ct. No. 102-63); *Charlene Ackley v. United States*, (Cl. Ct. No. 460-78); *Bret Aastadt v. United States*, (Cl. Ct. No. 146-85L); and *Norman Giffen v. United States*, (Cl. Ct. No. 746-85L).

(i) [Reserved]

(j) *Coquille Tribe of Indians*. (1) Pursuant to section 7 of the Coquille Restoration Act of June 28, 1989, Pub. L. 101-42, a tribal membership roll is to be prepared comprised of persons of Coquille Indian ancestry:

(i) Who were born on or before and living on June 28, 1989;

(ii) Who possess at least one-eighth ($\frac{1}{8}$) degree or more Indian blood;

(iii) Who are not enrolled members of another federally recognized tribe; and

(iv) Whose names were listed on the Coquille roll prepared pursuant to the Act of August 30, 1954 (68 Stat. 979; 25 U.S.C. 771), and approved by the Bureau of Indian Affairs on August 29, 1960;

(v) Whose names were not listed on but who met the requirements to be listed on the Coquille roll prepared pursuant to the Act of August 30, 1954, and approved by the Bureau of Indian Affairs on August 29, 1960; or

(vi) Who are lineal descendants of persons, living or dead, identified in paragraphs (j)(1)(iv) and (j)(1)(v) of this section.

(2) To establish eligibility for inclusion on the tribal membership roll, all persons must file an application form with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 539, Siletz, Oregon 97380 by January 10, 1991. Application forms filed after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(3) For the purposes of establishing eligibility under paragraph (j) of this section, any available evidence establishing Coquille ancestry and the required degree of Indian blood shall be accepted. However, information shown on the Coquille roll prepared pursuant to the Act of August 30, 1954, shall be accepted as conclusive evidence of Coquille ancestry and blood degree information shown on the January 1, 1940, census roll of nonreservation Indians of the Grand Ronde-Siletz Agency shall be accepted as conclusive evidence in determining degree of Indian blood for applicants.

(4) For the purposes of establishing eligibility under paragraph (j) of this section, persons who may be enrolled members of another federally recognized tribe or tribes may submit a conditional relinquishment of membership document in the other tribe or tribes with their application forms. A conditional relinquishment of membership document in the other tribe or tribes with their application forms. A conditional relinquishment will be accepted

by the Superintendent only if it is executed by the person himself or herself unless the person is legally incompetent, in which case the legal guardian and only the legal guardian may execute the conditional relinquishment document. In the case of minors, only the parent or legal guardian may execute a conditional relinquishment document.

(k)-(q) [Reserved]

(r) *Mdewakanton and Wahpakoota Tribe of Sioux Indians.* (1) All lineal descendants of the Mdewakanton and Wahpakoota Tribe of Sioux Indians who were born on or prior to and were living on October 25, 1972, whose names or the name of a lineal ancestor appears on any available records and rolls acceptable to the Secretary of the Interior and who are not members of the Flandreau Santee Sioux Tribe of South Dakota, the Santee Sioux Tribe of Nebraska, the Lower Sioux Indian Community at Morton, Minn., the Prairie Island Indian Community at Welch, Minn., or the Shakopee Mdewakanton Sioux Community of Minnesota shall be entitled to be enrolled under title I, section 101(b) of the act of October 25, 1972 (86 Stat. 1168), to share in the distribution of funds derived from a judgment awarded the Mississippi Sioux Indians.

(2) Applications for enrollment must have been filed with the Director, Aberdeen Area Office, Bureau of Indian Affairs, 820 South Main Street, Aberdeen, S. Dak. 57401, and must have been received no later than November 1, 1973. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Each application for enrollment with any of the tribes named in paragraph (r)(1) of this section which may be rejected by the tribes shall be reviewed by the Director to determine whether the applicant meets the requirements for enrollment as a descendant of the Mdewakanton and Wahpakoota Tribe of Sioux Indians under paragraph (r)(1) of this section. Each rejection notice issued by the tribes shall contain a statement to the effect that the application is being given such review.

(s) *Sisseton and Wahpeton Mississippi Sioux Tribe.* (1) All lineal descendants of the Sisseton and Wahpeton Mississippi Sioux Tribe who were born on or prior to and were living on October 25, 1972, whose names or the name of a lineal ancestor appears on any available records and rolls acceptable to the Secretary of the Interior and who are not members of the Devils Lake Sioux Tribe of North Dakota, the Sisseton and the Wahpeton Sioux Tribe of South Dakota, or the Assiniboine and Sioux Tribes of the Fort Peck Reservation shall be entitled to be enrolled under title II, section 201(b) of the act of October 25, 1972 (86 Stat. 1168), to share in the distribution of certain funds derived from a judgment awarded the Mississippi Sioux Indians.

(2) Applications for enrollment must have been filed with the Director, Aberdeen Area Office, Bureau of Indian Affairs, 820 South Main Street, Aberdeen, S. Dak. 57401, and must have been received no later than November 1, 1973. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Each application for enrollment with any of the tribes named in paragraph (s)(1) of this section which may be rejected by the tribes shall be reviewed by the Director to determine whether the applicant meets the requirements for enrollment as a descendant of the Sisseton and Wahpeton Mississippi Sioux Tribe under paragraph (s)(1) of this section. Each rejection notice issued by the tribe shall contain a statement to the effect that the application is being given such review.

(t)–(v) [Reserved]

(w) *Lower Skagit Tribe of Indians.* (1) All persons of Lower Skagit ancestry born on or prior to and living on February 18, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on the 1919 Roblin Roll and other records acceptable to the Assistant Secretary, shall be entitled to have their names placed on the roll, to be prepared and used as the basis to distribute the judgment funds awarded the Lower Skagit Tribe in Indian Claims Commission docket 294.

Proof of Upper Skagit ancestry will not be acceptable as proof of Lower Skagit ancestry.

(2) Applications for enrollment must have been filed with the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201, and must have been received by close of business on May 31, 1977. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with parts 87 and 115 of this chapter.

(x) *Kikiallus Tribe of Indians.* (1) All persons of Kikiallus ancestry born on or prior to and living on February 18, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on the 1919 Roblin Roll and other records acceptable to the Assistant Secretary, shall be entitled to have their names placed on the roll, to be prepared and used as the basis to distribute the judgment funds awarded the Kikiallus Tribe in Indian Claims Commission docket 263.

(2) Applications for enrollment must have been filed with the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98021, and must have been received by close of business on May 31, 1977. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with parts 87 and 115 of this chapter.

(y) *Swinomish Tribe of Indians.* (1) All persons of Swinomish ancestry born on or prior to and living on December 10, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on the 1919 Roblin Roll and other records acceptable to the Assistant Secretary, shall be entitled to have their names placed on the roll, to be prepared and used as the basis to distribute the judgment funds awarded the Swinomish Tribe in Indian Claims Commission docket 233.

(2) Application for enrollment must have been filed with the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201, and must have been received by close of business on May 31, 1977. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with parts 87 and 115 of this chapter.

(z) *Samish Tribe of Indians.* (1) All persons of Samish ancestry born on or prior to and living on December 10, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on any records acceptable to the Secretary, shall be entitled to have their names placed on the roll to be prepared and used as the basis to distribute the judgment funds awarded the Samish Tribe in Indian Claims Commission docket 261.

(2) Applications for enrollment must have been filed with the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201, and must have been received by close of business on May 31, 1977. Applicants received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with parts 87 and 115 of this chapter.

[50 FR 46430, Nov. 8, 1985, as amended at 53 FR 11272, Apr. 6, 1988; 54 FR 14193, Apr. 7, 1989; 55 FR 7494, Mar. 2, 1990; 55 FR 41519, Oct. 12, 1990; 56 FR 10806, Mar. 14, 1991]

§ 61.5 Notices.

(a) The Director or Superintendent shall give notice to all Directors of the Bureau of Indian Affairs and all Superintendents within the jurisdiction of the Director, of the preparation of the roll for public display in Bureau field offices. Reasonable efforts shall be made to place notices for public display in community buildings, tribal buildings, and Indian centers.

(b) The Director or Superintendent shall, on the basis of available residence data, publish, and republish

when advisable, notices of the preparation of the roll in appropriate locales utilizing media suitable to the circumstances.

(c) The Director or Superintendent shall, when applicable, mail notices of the preparation of the roll to previous enrollees or tribal members at the last address of record or in the case of tribal members, the last address available.

(d) Notices shall advise of the preparation of the roll and the relevant procedures to be followed including the qualifications for enrollment and the deadline for filing application forms to be eligible for enrollment. The notices shall also state how and where application forms may be obtained as well as the name, address, and telephone number of a person who may be contacted for further information.

§ 61.6 Application forms.

(a) Application forms to be filed by or for applicants for enrollment will be furnished by the Director, Superintendent, or other designated persons, upon written or oral request. Each person furnishing application forms shall keep a record of the names of individuals to whom forms are given, as well as the control numbers of the forms and the date furnished. Instructions for completing and filing applications shall be furnished with each form. The form shall indicate prominently the deadline for filing application forms.

(b) Among other information, each application form shall contain:

(1) Certification as to whether application form is for a natural child or an adopted child of the parent through whom eligibility is claimed.

(2) If the application form is filed by a sponsor, the name and address of sponsor and relationship to applicant.

(3) A control number for the purpose of keeping a record of forms furnished interested individuals.

(4) Certification that the information given on the application form is true to the best of the knowledge and belief of the person filing the application. Criminal penalties are provided by statute for knowingly filing false information in such applications (18 U.S.C. 1001).

(c) Application forms may be filed by sponsors on behalf of other persons.

(d) Every applicant or sponsor shall furnish the applicant's mailing address on the application form. Thereafter, the applicant or sponsor shall promptly notify the Director or Superintendent of any change in address, giving appropriate identification of the application, otherwise the mailing address as stated on the form shall be acceptable as the address of record for all purposes under the regulations in this part 61.

§ 61.7 Filing of application forms.

(a) Application forms filed by mail must be postmarked no later than midnight on the deadline specified. Where there is no postmark date showing on the envelope or the postmark date is illegible, application forms mailed from within the United States, including Alaska and Hawaii, received more than 15 days and application forms mailed from outside of the United States received more than 30 days after the deadline specified in the office of the designated Director or Superintendent, will be denied for failure to file in time.

(b) Application forms filed by personal delivery must be received in the office of the designated Director or Superintendent no later than close of business on the deadline specified.

(c) If the deadline for filing application forms falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the deadline will be the next working day thereafter.

(d) The provisions of this section shall not apply in the preparation of the rolls under paragraphs (r), (s), (w), (x), (y) and (z) of § 61.4.

§ 61.8 Verification forms.

If the Director or Superintendent is preparing a roll of Indians by adding names of eligible persons to and deleting names of ineligible persons from a previously approved roll, *and* individuals whose names appear on the previously approved roll are not required to file applications for enrollment, a verification form, to be completed and returned, shall be mailed to each previous enrollee using the last address of record. The verification form will be used to ascertain the previous enrollee's current name and address and that the enrollee is living, or if deceased,

the enrollee's date of death. Name and/or address changes will only be made if the verification form is signed by an adult enrollee, if living, or the parent or guardian having legal custody of a minor enrollee, or an authorized sponsor. The verification form may also be used by any sponsor to notify the Director or Superintendent of the date of death of a previous enrollee.

§ 61.9 Burden of proof.

The burden of proof rests upon the applicant or tribal member to establish eligibility for enrollment. Documentary evidence such as birth certificates, death certificates, baptismal records, copies of probate findings, or affidavits, may be used to support claim of eligibility for enrollment. Records of the Bureau of Indian Affairs may be used to establish eligibility.

§ 61.10 Review of applications by tribal authorities.

(a) If tribal review is applicable, the Director or Superintendent shall submit all applications to the Tribal Committee for review and recommendations or determinations; except that, in the cases of adopted persons where the Bureau of Indian Affairs has assured confidentiality to obtain the information necessary to determine the eligibility for enrollment of the individual or has the statutory obligation to maintain the confidentiality of the information, the confidential information may not be released to the Tribal Committee, but the Director or Superintendent shall certify as to the eligibility for enrollment of the individual to the Tribal Committee.

(b) The Tribal Committee shall review all applications and make its recommendations or determinations in writing stating the reasons for acceptance or rejection for enrollment.

(c) The Tribal Committee shall return the applications to the Director or Superintendent with its recommendations or determinations and any additional evidence used in determining eligibility for enrollment within 30 days of receipt of the applications by the Tribal Committee. The Director or Superintendent may grant the Tribal Committee additional time, upon request, for its review.

(d) Acceptance of an individual for enrollment by the Tribal Committee does not insure the individual's eligibility to share in the distribution of the judgment funds.

§ 61.11 Action by the Director or Superintendent.

(a) The Director or Superintendent shall consider each application, all documentation, and when applicable, tribal recommendations or determinations.

(b) The Director or Superintendent, when tribal recommendations or determinations are applicable, shall accept the recommendations or determinations of the Tribal Committee unless clearly erroneous.

(1) If the Director or Superintendent does not accept the tribal recommendation or determination, the Tribal Committee shall be notified in writing, by certified mail, return receipt requested, or by personal delivery, of the action and the reasons therefor.

(2) The Tribal Committee may appeal the decision of the Director or Superintendent not to accept the tribal recommendation or determination. Such appeal must be in writing and must be filed pursuant to part 62 of this chapter.

(3) Unless otherwise specified by law or in a tribal governing document, the determination of the Director or Superintendent shall only affect the individual's eligibility to share in the distribution of judgment funds.

(c) The Director or Superintendent, upon determining an individual's eligibility, shall notify the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing of the decision. If an individual files applications on behalf of more than one person, one notice of eligibility or adverse action may be addressed to the person who filed the applications. However, the notice must list the name of each person involved. Where an individual is represented by a sponsor, notification of the sponsor of eligibility or adverse action shall be considered to be notification of the individual.

(1) If the Director or Superintendent determines that the individual is eligi-

ble, the name of the individual shall be placed on the roll.

(2) If the Director or Superintendent determines that the individual is not eligible, he/she shall notify the individual's parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing by certified mail, to be received by the addressee only, return receipt requested, and shall explain fully the reasons for the adverse action and the right to appeal to the Secretary. If correspondence is sent out of the United States, registered mail will be used. If a certified or registered notice is returned as "Unclaimed" the Director or Superintendent shall re-mail the notice by regular mail together with an acknowledgment of receipt form to be completed by the addressee and returned to the Director or Superintendent. If the acknowledgment of receipt is not returned, computation of the appeal period shall begin on the date the notice was re-mailed. Certified or registered notices returned for any reason other than "Unclaimed" need not be re-mailed.

(d) Except as provided in paragraph (c)(2) of this section, a notice of adverse action is considered to have been made and computation of the appeal period shall begin on the earliest of the following dates:

(1) Of delivery indicated on the return receipt;

(2) Of acknowledgment of receipt;

(3) Of personal delivery; or

(4) Of the return by the post office of an undelivered certified or registered letter.

(e) In all cases where an applicant is represented by an attorney, the attorney shall be recognized as fully controlling the application on behalf of the applicant and service on the attorney of any document relating to the application shall be considered to be service on the applicant. Where an applicant is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(f) To avoid hardship or gross injustice, the Director or Superintendent may waive technical deficiencies in applications or other submissions. Failure to file by the deadline does not constitute a technical deficiency.

§ 61.12 Appeals.

Appeals from or on behalf of tribal members or applicants who have been denied enrollment must be in writing and must be filed pursuant to part 62 of this chapter. When the appeal is on behalf of more than one person, the name of each person must be listed in the appeal. A copy of part 62 of this chapter shall be furnished with each notice of adverse action.

§ 61.13 Decision of the Assistant Secretary on appeals.

The decision of the Assistant Secretary on an appeal shall be final and conclusive and written notice of the decision shall be given the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable. The name of any person whose appeal has been sustained will be added to the roll. Unless otherwise specified by law or in a tribal governing document, the determination of the Assistant Secretary shall only affect the individual's eligibility to share in the distribution of the judgment funds.

§ 61.14 Preparation, certification and approval of the roll.

(a) The staff officer shall prepare a minimum of five copies of the roll of those persons determined to be eligible for enrollment. The roll shall contain for each person a roll number, name, address, sex, date of birth, date of death, when applicable, and when required by law, degree of Indian blood, and, in the remarks column, when applicable, the basic roll number, date of the basic roll, name and relationship of ancestor on the basic roll through whom eligibility was established.

(b) A certificate shall be attached to the roll by the staff officer or Superintendent certifying that to the best of his/her knowledge and belief the roll contains only the names of those persons who were determined to meet the qualifications for enrollment.

(c) The Director shall approve the roll.

§ 61.15 Special instructions.

To facilitate the work of the Director or Superintendent, the Assistant Secretary may issue special instructions

not inconsistent with the regulations in this part 61.

PART 62—ENROLLMENT APPEALS

Sec.

- 62.1 Definitions.
- 62.2 Purpose.
- 62.3 Information collection.
- 62.4 Who may appeal.
- 62.5 An appeal.
- 62.6 Filing of an appeal.
- 62.7 Burden of proof.
- 62.8 Advising the tribal committee.
- 62.9 Action by the Superintendent.
- 62.10 Action by the Director.
- 62.11 Action by the Assistant Secretary.
- 62.12 Special instructions.

AUTHORITY: 5 U.S.C. 301, 25 U.S.C. 2 and 9.

SOURCE: 52 FR 30160, Aug. 13, 1987, unless otherwise noted.

§ 62.1 Definitions.

As used in these regulations:

Assistant Secretary means the Assistant Secretary of the Interior for Indian Affairs or an authorized representative acting under delegated authority.

Bureau means the Bureau of Indian Affairs of the Department of the Interior.

Commissioner means the Commissioner of Indian Affairs or an authorized representative acting under delegated authority.

Department means the Department of the Interior.

Director means the Area Director of the Bureau of Indian Affairs area office which has administrative jurisdiction over the local field office responsible for administering the affairs of a tribe, band, or group of Indians or an authorized representative acting under delegated authority.

Secretary means the Secretary of the Interior or an authorized representative acting under delegate authority.

Sponsor means any authorized person, including an attorney, who files an appeal on behalf of another person.

Superintendent means the official or other designated representative of the Bureau of Indian Affairs in charge of the field office which has immediate administrative responsibility with respect to the affairs of a tribe, band, or group of Indians or an authorized representative acting under delegated authority.